

United States District Court
Northern District of California

UNITED STATES OF AMERICA,

Plaintiff,

v.

APPROXIMATELY \$22,520 IN UNITED
STATES CURRENCY,

Defendant.

Case No.: 13-05107-JSW (KAW)

REPORT AND RECOMMENDATION TO
DENY PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT WITHOUT
PREJUDICE, DISMISS THE COMPLAINT
WITHOUT PREJUDICE, AND GRANT
LEAVE TO AMEND THE COMPLAINT

In this *in rem* forfeiture action, Plaintiff, United States, moves for default judgment against Defendant, Approximately \$22,520 in United States Currency, pursuant to 21 U.S.C. § 881(a)(6). The Government's motion follows an entry of default by the clerk on January 30, 2014. To date, no formal claims or answers have been filed in this action. The motion for default judgment was referred to the undersigned for report and recommendation.

On March 18, 2014, the Court ordered the Government to provide supplemental briefing on whether the verification accompanying the complaint is fatally defective under California Code of Civil Procedure sections 446 and 2015.5 for failure to specify the place the declaration was executed within the State of California. (Dkt. No. 18.)

On April 1, 2014, the Government filed a supplemental brief requesting permission to file an amended complaint for forfeiture to correct the fatal verification. (Gov't's Resp., Dkt. No. 19 at 1; Proposed Am. Compl., Dkt. No. 19, Ex. A.) The Government also asserted that "[u]pon filing of this Amended Complaint, the United States contends that the issue raised by the Court is moot and thus asks this Court to resolve the pending motion for default without oral argument." (Gov't's Resp. at 1-2.)

"When a party fails to properly verify a complaint, the appropriate procedure is for the district court to dismiss the complaint without prejudice" and to allow the defective verification to

1 be corrected by amendment. *United States v. \$84,740.00 U.S. Currency*, 900 F.2d at 1406 (citing
2 *United States v. \$38,000.00 Dollars in U.S. Currency*, 816 F.2d 1538, 1547-49 (11th Cir. 1987)).

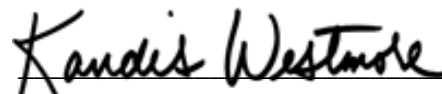
3 Thus, since the original complaint is fatally defective because it was not properly verified,
4 the Government cannot simply file an amended complaint without complying with all forfeiture
5 requirements—including service of the amended complaint on the known, potential claimants—
6 and have the Court grant its pending motion for default judgment. *See* Fed. R. Civ. P. Supp
7 Admir. Mar. Cl. G(2)-(4). To the contrary, the pending motion for default judgment pertains to
8 the initial complaint and, therefore, must be denied. The Government may, however, refile a
9 subsequent motion for default judgment after it fully complies with all of the statutory
10 requirements for forfeiture *in rem*.

11 Accordingly, the Court recommends that the Government's motion for default judgment
12 be DENIED WITHOUT PREJUDICE, that the complaint be DISMISSED WITHOUT
13 PREJUDICE, and that the Government's request to file its amended complaint be GRANTED.

14 Any party may file objections to this report and recommendation with the District Judge
15 within 14 days of service. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); Civil L.R. 72-3. The
16 parties are advised that failure to file objections within the specified time may waive the right to
17 appeal the District Court's order. *IBEW Local 595 Trust Funds v. ACS Controls Corp.*, No. C-10-
18 5568, 2011 WL 1496056, at *3 (N.D. Cal. Apr. 20, 2011).

19 IT IS SO RECOMMENDED.

20 Dated: April 2, 2014


KANDIS A. WESTMORE
United States Magistrate Judge

United States District Court
Northern District of California